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JAN 19 1994

HUB LAW OFFICES

12 Attorneys for Plaintiff and
 13 Cross-Defendant CHURCH OF SCIENTOLOGY
 14 INTERNATIONAL

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 16 FOR THE COUNTY OF MARIN

17	CHURCH OF SCIENTOLOGY	)	CASE NO. 157 680
18	INTERNATIONAL, a California not-)	
19	for-profit religious corporation;	)	PLAINTIFF'S REPLY TO
20		)	DEFENDANTS' OPPOSITIONS TO
21	Plaintiffs,	)	PLAINTIFF'S MOTIONS TO
22		)	COMPEL PRODUCTION OF
23	vs.	)	DOCUMENTS
24)	
25	GERALD ARMSTRONG; MICHAEL WALTON;)	
26	et al.,)	
27	Defendants.)	
28)	
29	_____)	
30	GERALD ARMSTRONG,)	
31)	
32	Cross-Complainant,)	
33		)	DATE: January 21, 1994
34	vs.	)	TIME: 9:00 a.m.
35		)	DEPT: 1
36	CHURCH OF SCIENTOLOGY)	
37	INTERNATIONAL, a California)	
38	Corporation; DAVID MISCAVIGE;	)	DISCOVERY CUT-OFF: None
39	DOES 1 to 100;	)	MOTION CUT-OFF: None
40	Cross-Defendant.	)	TRIAL DATE: None
41)	

42 Plaintiff and cross-defendant, Church of Scientology
 43 International files this consolidated reply in support of its
 44 pending motions to compel.

I. INTRODUCTION

1
2 Plaintiff Church of Scientology International ("the Church")
3 served requests for documents on defendants Gerald Armstrong, the
4 Gerald Armstrong Corporation, and Michael Walton on August 9,
5 1993 and September 16, 1993. Defendants' response was to object
6 to all of the requests, and to refuse to produce anything.
7 [Moving Papers, Ex. B.] The Church sought to meet and confer
8 with defendants to resolve their objections short of motion
9 practice. [Moving Papers, Ex. C.] Defendants' response was
10 silence. [Moving Papers, Declaration of Andrew Wilson, ¶ 2.] On
11 November 22, 1993 and November 30, 1993, the Church filed three
12 motions to compel further responses to the requests. [Moving
13 Papers.] The defendants responded by seeking to have the hearing
14 date for the motion extended to January 21, 1994. [Ex. A.] Now,
15 5 months since the initial request was made, and literally one
16 day before this reply was due to be filed, Defendant Armstrong
17 has finally produced a few documents in response to the
18 request,¹ and has filed amended responses which admit that the
19 bulk of his initial objections were baseless.²

20 However, Armstrong and his alter ego corporation have still
21 refused to produce documents responsive to 20 requests, claiming
22 that the requests violate Armstrong's "right to privacy." He has

23
24 ¹ The Church's counsel received handservice of some documents
25 for the first time on Tuesday, January 18, 1994. [Declaration of
26 Laurie Bartilson.]

27 ² In his Amended Responses to Plaintiff's Second Request for
28 Production of Documents, for example, Armstrong agrees to produce
without objection documents responsive to 7 categories of requests
(all of which he objected to in October) and admits that he has no
documents responsive to 7 requests (all of which he also objected
to in October).

1 not provided plaintiff with any log designating the identity of
2 the documents for which he is claiming a privilege, as required
3 by the Code of Civil Procedure, so plaintiff is left to guess at
4 the extent and nature of the discovery which Armstrong seeks to
5 conceal. Further, Armstrong has stated that he will only produce
6 documents in response to some of the requests to the extent that
7 he considers the documents to be relevant to the litigation.
8 California law is clear, however, that this is not a
9 determination that a party is permitted to simply make on his
10 own: Armstrong is required, at the very least, to identify each
11 document which is responsive to plaintiff's request, but which he
12 has refused to produce because he doesn't think it is relevant.

13 Finally, defendant Michael Walton has filed a "joinder" in
14 Armstrong's oppositions to the motions, but has done nothing to
15 either amend his responses or produce any documents. Yet many of
16 Armstrong's amended responses insist that Armstrong has no
17 responsive documents -- because Walton has them. This is simply
18 a failure to respond in good faith to discovery, and a "shell
19 game" being played by defendants, at the expense of the
20 plaintiff.

21 Defendants' depositions have been set in this matter for
22 February 3 and 4, 1994. Plaintiff requires these documents in
23 order to proceed expeditiously with the depositions.
24 Accordingly, plaintiff requests that the Court require defendants
25 to produce all responsive documents on or before January 27,
26 1994; and require defendants to pay to plaintiff the cost of
27 bringing these motions. Further, plaintiff requests that this
28 Court, on its own motion, appoint a referee to hear and determine

1 all discovery motions and disputes and to supervise depositions
2 in this action pursuant to C.C.P. § 639.³

3 **II. THE REQUESTED DOCUMENTS ARE RELEVANT AND NOT PRIVILEGED**

4 Defendant Armstrong admits that the issues of this case
5 squarely concern his financial dealings (or misdealings) and that
6 plaintiff is entitled to full disclosure of documents which are
7 fundamental to its case. [Oppo. at 6 - 7.] Armstrong asserts,
8 however, that he is entitled to "narrowly circumscribe"
9 plaintiff's discovery, and pick and choose himself which
10 documents are "relevant" and "fundamental," and which he is not
11 required to disclose. [Oppo. at 8.]

12 This proposed procedure is no doubt attractive to Armstrong;
13 it is not the procedure authorized by the Code of Civil
14 Procedure. C.C.P. § 2031(f) provides in relevant part that a
15 party seeking to prevent discovery of documents which it
16 considers privileged must "identify with particularity any
17 document . . . falling within any category of item in the demand
18 to which an objection is being made, and . . . set forth clearly
19 the extent of, and the specific ground for, the objection."
20 It is up to the Court, and not Armstrong, to determine whether or
21 not the documents in question are indeed privileged or private in
22 any fashion and, if so, if Armstrong's claimed privacy interest
23 outweighs plaintiff's need for discovery. Valley Bank of Nevada

24
25 ³ In the event that the Court finds that some of defendants'
26 claims of privilege may be warranted (a difficult proposition since
27 defendants have refused to even identify the supposedly privileged
28 matter), plaintiff requests that defendants be ordered to produce
a log of those documents as to which they are claiming privilege
pursuant to C.C.P. §2031(f)(3) to plaintiff and the discovery
referee on or before January 27, 1994, so that the questions of
privilege may be ruled upon before their scheduled depositions.

1 v. Superior Court (1975) 15 Cal.3d 654, 125 Cal.Rptr. 553. Cases
2 cited by Armstrong concerning pretrial discovery of financial
3 information for punitive damage recovery are not relevant; where,
4 as here, defendants' finances are directly related to the
5 substantive claim involved, they are discoverable. Rawnsley v.
6 Superior Court (1986) 183 Cal.App.3d 86, 227 Cal.Rptr. 806.

7 Here, Armstrong has made no effort to identify what
8 documents exist which he claims are privileged. He has asserted,
9 as to 2 requests, that he will produce some documents, but will
10 withhold unspecified other documents which he claims are private.
11 As to 20 more requests, he asserts that any responsive documents
12 are irrelevant, private or both.

13 All of the requests, however, seek documents that are
14 plainly relevant to the issues of this case, or are likely to
15 lead to the discovery of relevant evidence. Further, Armstrong's
16 claimed right of "privacy" is non-existent or waived as to many
17 of them.

18 For example, plaintiff has requested that Armstrong produce
19 a manuscript which he titled, "ONE HELL OF A STORY" and which
20 purports to be a treatment for a screenplay about his alleged
21 experiences in and with Scientology. This "private" document
22 which Armstrong seeks to protect was given by him to
23 Entertainment Television, and both described and shown on their
24 national program, Entertainment Tonight. The document is plainly
25 relevant (or likely to lead to the discovery of relevant
26 evidence) because it purports to discuss Armstrong's activities
27 during, inter alia, 1990 to the present -- the exact time period
28 relevant to this dispute. Plaintiff claims that, beginning in

1 August, 1990, Armstrong and the other defendants entered into a
2 fraudulent scheme designed to render Armstrong "judgment proof."
3 The complaint alleges that Armstrong cached his assets, but kept
4 control of them, and then began breaching his settlement
5 agreement with plaintiff, in an effort to coerce plaintiff into
6 paying him still more money in order to secure once again
7 Armstrong's previously-promised cooperation. Manuscripts written
8 by Armstrong during this period which purport to describe his
9 life and experiences are thus highly relevant to the issue of
10 fraudulent intent.

11 Moreover, Armstrong has claimed in deposition that his
12 writings, art work and other properties are (1) highly valuable
13 [Ex. B, Deposition of Gerald Armstrong, March 10, 1993, 549:15 -
14 550:14] and (2) were transferred by him to the Gerald Armstrong
15 Corporation [Ex. C, GA Depo., October 8, 1992 at 466:3-12.]
16 Thus, these claimed assets form some of the res which is directly
17 at issue herein. Plaintiff is entitled to obtain their
18 discovery, and have them independently appraised. Similarly,
19 plaintiff is entitled to discover into the correspondence which
20 Armstrong has entered into in an effort to sell, produce or
21 transfer these assets.⁴

22 Similarly, Armstrong proposes to supply plaintiff with some
23 of his financial records, but refuses to provide others.⁵ Yet

24 ⁴ The requests for documents relevant to these issues, for
25 which Armstrong has refused to produce any documents, are the
26 First Request for Production, Numbers 3 - 10.

27 ⁵ Specifically, Armstrong has refused to provide any
28 documents at all in response to Plaintiff's Second Request for
Production of Documents, Requests No. 13 (asking for documents
(continued...))

1 Armstrong's financial transactions from 1986 forward are the
2 precise subject of this action. Plaintiff may well discover
3 during the course of the action that Armstrong transferred
4 property to others than Walton, or that some additional transfers
5 were made after his confessed August, 1990 transfers, requiring
6 plaintiff to amend its pleadings in order to effect full
7 recovery. Armstrong may not avoid discovery into his financial
8 dealings on the novel theory that since plaintiff has not yet
9 found out about more of his fraudulent schemes, he has a right to
10 keep the details from being discovered.⁶ Plaintiff is entitled
11 to immediate production of all documents from Armstrong and his
12

13 ⁵(...continued)
14 identifying Armstrong's accountants and financial managers); No. 14
15 (asking for financial statements, including balance sheets); and
16 No. 15 (asking for documents reflecting his bank accounts).

17 ⁶ Armstrong's argument that he should be permitted to refrain
18 from providing discovery because of the plaintiff's alleged "bad
19 character" is ludicrous. Armstrong's stale and tired refrain that
20 plaintiff will subject him to what he terms "fair game" is an
21 invention of Armstrong designed to engender sympathy which is
22 undeserving. Armstrong's viewpoint is that the court systems exist
23 for no reason other than to subject him to "fair game;" indeed, he
24 has repeatedly accused plaintiff's counsel of being "front groups"
25 trying to drive him insane by such ordinary actions as filing a
26 complaint [Ex. D, Depo. of Armstrong, June 24, 1992 at 33:6-33:22.]
27 If anyone has been subjected to "fair game," it is plaintiff and
28 its counsel, who have had to endure the near-constant deluge of
false accusation from Armstrong for daring to suggest that
Armstrong should be held to the contract which he signed. The
latest suggestion that plaintiff's counsel should not be permitted
to view ordered discovery because of Armstrong's claims as to her
religious beliefs is simply outrageous. [Oppo. at 11.] Ms.
Bartilson's religious beliefs are certainly private, and not the
legitimate concern of Armstrong or his irresponsible counsel, Mr.
Greene. However, the Court may rest assured that they do not
include any of the matters falsely and outrageously asserted by
Armstrong. [Declaration of Laurie J. Bartilson.] Indeed, Ms.
Bartilson has been an officer of the court since 1979, when she was
first admitted to practice in Wisconsin, and has been a member in
good standing of the California State Bar since December, 1988.
[Id.]

1 alter ego, the Gerald Armstrong Corporation.

2 Moreover, because of Armstrong's willful delay in complying
3 with discovery, Armstrong should be ordered to pay plaintiff's
4 expenses in bringing this motion. C.C.P. §§ 2023 (a)(4),(5),(6),
5 (8); 2023(b)(1); 2031(1).

6 III. WALTON'S OBJECTIONS ARE RAISED IN BAD FAITH

7 Michael Walton has refused to produce any documents at all.
8 He has objected to all of plaintiff's requests, which reasonably
9 seek documents related to the transfers alleged in the complaint.
10 His objections, which parallel the objections made by Armstrong
11 and largely abandoned, have not been explained or amplified by
12 Walton, despite requests by plaintiff's counsel. Walton attempts
13 to rely on Armstrong's opposition, but Armstrong has said nothing
14 to explain Walton's refusal to produce either, instead asserting
15 that 5 of plaintiff's requests made to Armstrong are for
16 documents which Walton possesses.

17 Under these circumstances, Walton's refusal to reasonably
18 participate in the discovery process is simply bad faith. He
19 should be ordered to produce all of the requested documents, and
20 ordered to pay plaintiff's expenses in bringing this motion.
21 C.C.P. §§ 2023 (a)(3),(4),(5),(6),(8); 2023 (b)(1); 2031(1):

22 IV. CONCLUSION

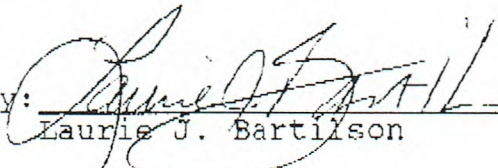
23 Armstrong and Walton have successfully avoided substantial
24 discovery in this action for more than 5 months. The documents
25 requested are basic to plaintiff's complaint and the defenses
26 raised by Armstrong and Walton. Now, as plaintiff's motions are
27 finally about to be heard, Armstrong has finally provided
28 plaintiffs with a few documents, and refused to even identify

1 those for which he is claiming a privilege. Walton has neither
 2 produced nor identified any documents, although Armstrong has
 3 asserted that Walton possesses 5 categories of relevant
 4 documents. With their depositions imminent, plaintiff requests
 5 that this Court: (1) order defendants to produce the documents in
 6 full on or before January 27, 1994; (2) order that all further
 7 discovery matters, including the taking of depositions, take
 8 place before a discovery referee; and (3) order defendants to pay
 9 plaintiff's costs of bringing these motions.

10 Dated: January 19, 1994

Respectfully submitted,

11 BOWLES & MOXON

12
 13 By: 
 14 Laurie J. Bartilson

15 Andrew H. Wilson
 WILSON, RYAN & CAMPILONGO

16 Attorneys for Plaintiff
 17 CHURCH OF SCIENTOLOGY
 18 INTERNATIONAL

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